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No. 83-2163

IN THE
SUPREME COURT OF THE UNITED STATES
October Term. 1984

GARTER-BARE COMPANY, a limited partnership, and KNUT L. BJORN-LARSEN,

Petitioners,

vs.

MUNSINGWEAR, INC., a Corporation,

Defendant and Respondent.

MEMORANDUM OF POINTS AND AUTHORITES IN SUPPORT OF APPLICATION FOR ORDER, TO WHICH ALL PARTIES CONSENT, GRANTING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, VACATING JUDGMENTS BELOW, AND REMANDING CASE WITH INSTRUCTIONS TO DISMISS AS MOOT

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EDITOR'S NOTE

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The Applicants and petitioners herein, GARTER-BARE COMPANY ("Garter-Bare") and KNUT L. BJORN-LARSEN ("Larsen"), plaintiffs-appellants below, respectfully submit to this Honorable Court the following memorandum of points and authorities in support of their application, to which consent is given by MUNSINGWEAR, INC.,

defendant-appellee below and respondents herein, for order granting plaintiffs-appellants' petition for writ of certiorari now pending before this Court, vacating the decisions below, and remanding with instructions to dismiss case as moot:

1. Any party may file supplemental papers at any time while a petition for certiorari is pending calling attention of the Court to intervening matters not available at the time of the party's last filing.

Rules of the Supreme Court, Rule 22.6

2. If a case becomes moot while an appeal is pending, it is the duty of the appellate court on application to vacate the lower court judgment.

United States v. Munsingwear, Inc., 340 U.S. 36 (1950).

3. If advised the matter has become moot, this Court will summarily grant certiorari, vacate, and remand with

instructions to dismiss.

Tulare Lake Canal Co. v. United States, 103 S.Ct 712 (1982);

Alabama v. David, 446 U.S. 903 (1980).

13A Wright, Miller & Cooper, Federal Practice and Procedure: Jurisdiction 2d, |3533.10 (1984).

4. As shown in the accompanying affidavit, this case has become moot because all the parties to the litigation have entered into a binding settlement agreement which entirely resolves this matter and calls upon the parties to seek an order from this Honorable Court granting the petition for writ of certiorari, vacating the judgments below, and remanding the case with instructions to dismiss the case for mootness.

WHEREFORE, the petitioners respectfully pray that this Honorable Court grant the relief requested in the accompanying

application filed by petitioners and consented to by respondent, and for such other relief as is appropriate.

Respectfully submitted,

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